

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center

4200 Wilson Blvd Stop 7100
Arlington VA 20598-7100
Staff Symbol: Ca
Toll-Free: 1-800-280-7118
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NPFCCCLAIMSINFO@uscg.mil

5890
May 5, 2014

Alaska Dept. of Environmental Conservation

RE: J13014-0002

Dear Mr. Hoover:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), offers to pay \$18,016.88 as the compensable amount for OPA claim number J13014-0002.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

All costs that are not determined as compensable are considered denied. You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claims. Reconsideration will be based upon the information provided and a claim may be reconsidered only once. Disposition of the reconsideration will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include corresponding claim number.

Mail reconsideration request to:

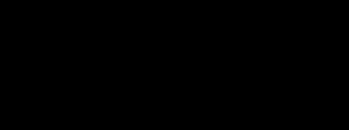
Director
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Boulevard, Suite 1000
Arlington, VA 20598-7100

If you accept this determination, please sign the enclosed Acceptance / Release Agreement where indicated and return to the above address.

If we do not receive the signed original Acceptance / Release Agreement within 60 days of the date of this letter, the determination is void. If the determination is accepted, an original signature and a valid tax identification number (EIN or SSN) are required for payment. If you are a Claimant that has submitted other claims to the National Pollution Funds Center, you are required to have a valid Contractor Registration record prior to payment. If you do not, you may register free of charge at www.SAM.gov. Your payment will be mailed or electronically deposited in your account within 60 days of receipt of the Release Agreement.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at 1-800-280-7118.

Sincerely,

A black rectangular box redacting the signature of the Claims Manager.

Claims Manager
U.S. Coast Guard
By direction

Enclosures: Claim Summary / Determination
Acceptance / Release Agreement

ACCEPTANCE / RELEASE AGREEMENT

Claim Number: J13014-0002

Claimant Name: State of Alaska Dept. of
Envrionmental Conservation

I, the undersigned, ACCEPT this settlement offer of \$18,016.88 as full and final compensation for (removal costs / damages) arising from the specific claim number identified above. With my signature, I also acknowledge that I accept as final agency action all costs submitted with subject claim that were denied in the determination and for which I received no compensation.

This settlement represents full and final release and satisfaction of the amounts paid from the Oil Spill Liability Trust Fund under the Oil Pollution Act of 1990 for this claim. I hereby assign, transfer, and subrogate to the United States all rights, claims, interest and rights of action, that I may have against any party, person, firm or corporation that may be liable for the amounts paid for which I have been compensated under this claim. I authorize the United States to sue, compromise or settle in my name and the United States fully substituted for me and subrogated to all of my rights arising from and associated with those amounts paid for which I am compensated for with this settlement offer. I warrant that no legal action has been brought regarding this matter and no settlement has been or will be made by me or any person on my behalf with any other party for amounts paid which is the subject of this claim against the Oil Spill Liability Trust Fund (Fund).

This settlement is not an admission of liability by any party.

With my signature, I acknowledge that I accept as final agency action all amounts paid for this claim and amounts denied in the determination for which I received no compensation.

I, the undersigned, agree that, upon acceptance of any compensation from the Fund, I will cooperate fully with the United States in any claim and/or action by the United States against any person or party to recover the compensation. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for those amounts paid for which the Fund has provided compensation, by providing any documentation, evidence, testimony, and other support, as may be necessary for the United States to recover from any other person or party.

I, the undersigned, certify that to the best of my knowledge and belief the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under federal law (including, but not limited to 18 U.S.C. §§ 287 and 1001).

Title of Person Signing

Date of Signature

Printed Name of Claimant or Authorized Representative

Signature

Title of Witness

Date of Signature

Printed Name of Witness

Signature

*DUNS/EIN/SSN of Payee
Please Circle one

Payee

Bank Routing Number

Bank Account Number

CLAIM SUMMARY / DETERMINATION

Claim Number:	J13014-0002
Claimant:	Alaska Dept. of Environmental Conservation
Type of Claimant:	STATE
Type of Claim:	Removal Costs
Claim Manager:	Eric Bunin
Amount Requested:	\$18,439.42

FACTS:

Oil Spill Incident:

On June 30, 2013 at approximately 0700, Sector Anchorage received a report that the 78' F/V LONE STAR had partially sank approximately 3.5 miles north of the mouth of Igushik River which flows southward from Amanka Lake into the Nushaguak Bay arm of Bristol Bay. The entire river is located within Togiak National Wildlife Refuge and flows through the village of Manoktak, where it is known for fishing.

The Lone Star's crew reported to the Coast Guard that the anchor line struck the vessel's transducer while they were anchoring the vessel. While at anchor, the tides swung the vessel around and ripped the transducer and cooling lines out, creating a hole in the steel hull. The vessel took on water, turned onto its side and overturned in 18 feet of water. Good Samaritan F/V TRADITION safely recovered all 4 people on board.¹

At risk was an estimated 14,000 gallons of diesel fuel, 250 gallons of unleaded gasoline, 150 gallons of hydraulic oil, and 150 gallons of lubricating oils at the time of sinking. Sheen from the sunken vessel caused the Alaska Department of Fish and Game (ADF&G) to close the local set-net fishery until the pollution threat was mitigated.

Responsible Party:

The Responsible Party (RP) is Burrece Fisheries, Inc., owned and operated by Mr. Charles Burrece of Bellingham, Washington. The RP's authorized representative is The Meredith Management Co.² The RP's legal counsel is Mr. Russell W. Pritchett of Pritchett & Jacobson, P.S.

Claimant:

Claimant is the State of Alaska, Department of Environmental Conservation, the state agency that responded and provided oversight for the incident response.

¹ ICS 209 – CG, DATED 7/17/2013, Prepared by: LT Gangel SR (acting).

² Mr. Tom Callahan, Regional Response Manager, Captain Tom Neumann, President, and Mr. Robert Chambers, VP Operations.

Claim:

Claimant seeks reimbursement of its uncompensated removal costs in the amount of \$18,439.42 for labor and travel related to the incident response. Claimant alleges that its claimed costs are reimbursable removal costs in accordance with OPA 90.

APPLICABLE LAW:

Under OPA 90, at 33 USC § 2702(a), **each** responsible party for a vessel or facility from which oil is discharged, or which poses a substantial threat of a discharge of oil, into or upon the navigable waters is liable for removal costs and damages as described in Section 2702(b) of OPA 90. A responsible party's liability will include "removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan". 33 USC § 2702(b)(1)(B).

"Oil" is defined in relevant part, at 33 USC § 2701(23), to mean "oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil".

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan and uncompensated damages. Removal costs are defined as "the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from an incident". 33 USC § 2701(31).

With certain exceptions all claims for removal costs or damages shall be presented first to the responsible party or guarantor. 33 USC § 2713(a).

If a claim is presented in accordance with subsection (a) of this section and the claim is not settled by any person by payment within 90 days after the date on which the claim was presented the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Fund. 33 USC § 2713(c)(2).

Under 33 USC §2713(b)(2) and 33 CFR 136.103(d) no claim against the OSLTF may be approved or certified for payment during the pendency of an action by the claimant in court to recover the same costs that are the subject of the claim. See also, 33 USC §2713(c) and 33 CFR 136.103(c)(2) [claimant election].

33 U.S.C. §2713(d) provides that "If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund."

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Under 33 CFR 136.105(b) each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident. In addition, under 33 CFR 136, the claimant bears the burden to prove the removal actions were reasonable in response to the scope of the oil spill incident, and the NPFC has the authority and responsibility to perform a reasonableness determination. Specifically, under 33 CFR 136.203, "a claimant must establish -

- (a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;
- (b) That the removal costs were incurred as a result of these actions;
- (c) That the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC.”

Under 33 CFR 136.205 “the amount of compensation allowable is the total of uncompensated *reasonable* removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan (NCP) or were directed by the FOSC. Except in exceptional circumstances, removal *activities* for which costs are being claimed must have been coordinated with the FOSC.” [Emphasis added].

DETERMINATION OF LOSS:

A. Overview:

1. A Federal On-Scene Coordinator (FOSC) directed the response to this event, and the State Representative acted as State On-Scene Coordinator (SOSC); as part of the ICS the actions undertaken by the Claimant were consistent with the National Contingency Plan (NCP). 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved a discharge or substantial threat of discharge of oil to “navigable waters.”
3. The Claimant is a state and is not required to present its claim to the responsible party before presenting it to the Fund. However, Claimant indicated that it did present its claim to the RP before coming to the Fund.
4. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified that no suit has been filed in court for the claimed costs.
5. In accordance with 33 U.S.C. § 2712(h)(1), the claim was submitted within the six year period of limitations for removal costs.
6. The NPFC Claims Manager reviewed all documentation submitted with the claim and determined that certain costs are allowable under OPA and 33 CFR § 136.205.

B. Analysis:

NPFC CA reviewed the documentation provided. The review focused on: (1) whether a discharge or substantial threat of a discharge to a navigable waterway occurred; (2) whether the actions taken were compensable “removal actions” under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of an incident); (3) whether the costs were incurred as a result of these actions; (4) whether the actions taken were determined by the FOSC, to be consistent with the NCP or directed by the FOSC, and (5) whether the costs were adequately documented and reasonable.

In this case, the facts and evidence support a finding that an OPA-incident occurred. The record also supports a finding that most of the claimed costs are compensable under OPA. The CG Incident Action Plan and Pollution Reports list State of Alaska, ADEC personnel as part of the Incident Command System serving as SOSCs. By providing personnel to act as the State On-Scene Coordinator, the State incurred labor expenses for personnel time spent performing state incident oversight. The State also paid for the travel expenses of its SOSC to attend the spill on-scene. NPFC finds that all costs are compensable removal costs as they are defined by OPA with the exception of time spent dealing with the media. The NPFC denies \$322.77 for three hours spent on July 1, 2013, handling press updates and providing photos to television stations; and denies \$99.77 for an hour spent on a television news interview on July 9, 2013. The total of these costs is \$422.54. They are not oil spill removal actions as defined by OPA and must be denied.

Therefore, the NPFC determines that \$18,016.88 is the compensable amount of the claim and offers this amount to the Claimant.

Claim Supervisor:

Date of Supervisor's review: *5/5/14*

Supervisor Action: *Approved*

Supervisor's Comments: